

— Supreme Court of the United States

OCTOBER TERM

No. 70-5038

JOHN ADAMS,

Petitioner,

—v.—

ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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No.

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF-APPELLEE

—vs—

JOHN ADAMS, DEFENDANT-APPELLANT

Appeal from the Circuit Court of Cook County,
Criminal Division

Indictment No. 67-641

Honorable JACQUES F. HEILINGOETTER, Judge Presiding
Grand Jury impaneled

Indictment returned into open Court bail set at \$10,000.00

State of Illinois)
County of Cook) ss.The February, 1967, Grand Jury of the Circuit
Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on January 4, 1967, at and within said County JOHN ADAMS committed the offense of sale of a narcotic drug in that he knowingly sold to AL NICHOLS for lawful money of the UNITED STATES OF AMERICA, otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity, (the exact quantity of which is unknown to said Grand Jurors), of a certain narcotic drug, to-wit: heroin, in violation of Chapter 38, Section 22-3, of the Illinois Re-

vised Statutes 1965, contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

JOHN J. STAMOS
State's Attorney

Appearance of CHARLES B. EVINS filed

Arraignment

State of Illinois)
) ss.
County of Cook)

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION

Ind. No. 67-641

PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF

—vs—

JOHN ADAMS, DEFENDANT

**MOTION TO DISMISS INDICTMENT
PETITION IN SUPPORT OF MOTION
NOTICE
PROOF OF SERVICE**

SAM ADAM
Attorney for Defendant
134 North LaSalle Street
Chicago, Illinois 60602
Suite 1622
CE 6-5543

MOTION TO DISMISS INDICTMENT

Now comes JOHN ADAMS, defendant in the above entitled cause, by and through his attorney, SAM ADAM, and moves this Honorable Court, pursuant to Chapter 38, Illinois Revised Statutes, 1963, Section 114-1, to dismiss all counts of the instant indictment, for the reasons set forth in the attached Petition in Support of Motion to Dismiss Indictment.

/s/ JOHN ADAMS
Defendant

/s/ SAM ADAM
SAM ADAM
Attorney for Defendant

PETITION IN SUPPORT OF MOTION TO DISMISS INDICTMENT

Now comes JOHN ADAMS, defendant in the above entitled cause, by and through his attorney, SAM ADAM, and states the following in support of the foregoing *Motion to Dismiss Indictment*:

1) The defendant, John Adams, on February 10, 1967, appeared before the Honorable Kenneth R. Wendt, Judge of the Circuit Court of Cook County.

2) The defendant was charged in a complaint for examination, No. 67 CCMC690103 with sale of narcotics.

3) The facts and circumstances surrounding that complaint are the same facts and circumstances involved in the instant indictment.

4) The Honorable Kenneth R. Wendt failed to appoint counsel for defendant.

5) The Honorable Kenneth R. Wendt conducted a preliminary hearing on the said date.

6) A certified copy of the said transcript of the said hearing is attached hereto, incorporated herein and marked as Defendant's Exhibit No. 1.

7) The said failure of the Court to appoint counsel for and on behalf of the defendant, John Adams, violated the defendant's Constitutional and statutory rights under the following provisions:

- 4
- I United States Constitution
Amendment VI
Amendment XIV
 - II Illinois Constitution
Article II, Section 2
Article II, Section 9
 - III Illinois Revised Statutes 1965
Chapter 38, Section 109-1

WHEREFORE, the defendant, JOHN ADAMS, respectfully moves this Honorable Court to quash and dismiss the instant indictment.

/s/ JOHN ADAMS
JOHN ADAMS
Defendant

NOTICE

To: HONORABLE
JOHN J. STAMOS
STATE'S ATTORNEY OF COOK COUNTY
2600 South California Avenue
Chicago, Illinois 60608

Please take notice that on the 28th day of April, 1967, I shall appear before the Honorable JACQUES F. HEILINGOETTER, one of the judges of the above Court, or whomever is sitting in his place, and there present the attached motion and supporting documents.

/s/ SAM ADAM
SAM ADAM
134 North LaSalle Street
Chicago, Illinois 60602
Central 6-5543
Attorney for Defendant

PROOF OF SERVICE

To: HONORABLE
JOHN J. STAMOS
State's Attorney of Cook County
2600 South California Avenue
Chicago, Illinois 60608

SAM ADAM, being first duly sworn on oath, deposes and says that he served a copy of the foregoing Notice with a copy of the foregoing Motion attached thereto upon the above named party at the above address by personally delivering said copies at the above address.

/s/ SAM ADAM
SAM ADAM
134 North LaSalle Street
Chicago, Illinois 60602
Central 6-5543
Attorney for Defendant

SUBSCRIBED and SWORN to before
me this 28th day of April, 1967

Notary Public

STATE OF ILLINOIS)
 COUNTY OF COOK) SS.
 CITY OF CHICAGO)

THE MUNICIPAL COURT OF CHICAGO
 FIRST MUNICIPAL DISTRICT OF
 THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

67 690103

THE PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF

vs.

JOHN ADAMS, DEFENDANT

EXCERPT OF REPORT OF PROCEEDINGS at the
 hearing of the above-entitled cause before the Honorable
 KENNETH R. WENDT, Judge of said Court, on the
 10th day of February, A. D., 1967.

APPEARANCES:

HON. JOHN J. STAMOS,
 State's Attorney, by

GERALD EISEN, ESQ.
 Assistant State's Attorney,
 appeared on behalf of the People;

* * *

THE CLERK: Raise your right hand, officer,
 (Witnesses sworn.)

WILLIS NANCE,

called as a witness herein, having been first duly sworn,
 was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EISEN:

Q Officer, your name nad assignment?

A Officer Willis Nance, assigned to the Vice Control
 Division, Narcotic Unit.

Q Calling your attention to January the 4th, 1967, at 1430 hours did you have occasion to be in the vicinity of Chicago and Orleans Streets, City of Chicago?

A Yes, sir; I was.

Q At that time and place did you have occasion to see the defendant?

A Yes, I did.

Q Tell the Court what occurred just prior to that time if anything.

A On the 4th day of January, your Honor, 1967, 1400 hours I had a conversation with a police informer at 1121 South State Street relative to making a control buy of narcotics from a person by the name of John. Informer was searched and found to be free of all monies and narcotics, and he was then driven to the vicinity of 18th and Wabash where he made contact with the defendant here.

Q Did you observe this?

A I observed the two of them come out of the tavern, yes. The Defendant and the informant boarded a bus and went to Orleans, and Orleans and Chicago, where I again saw the informer and the defendant alight from a bus. The defendant went into a telephone, went into a drug store, Rexall Drug Store on the corner and made a telephone call along side of Officer Williams. Moments later another person appeared down the street. This person here (indicating) left out of the drug store.

Q You mean the defendant?

A The defendant (indicating) left out of the drug store and walked a short distance north of the drug store on Chicago. The two of them had a brief, met momentarily there. This defendant here walked back on the east side of the street, walked south again. Officer—the informant came out of the drug store and joined this defendant here. Officer Williams followed behind the two of them until they got to Orleans and Chicago Avenue where the informant made a signal to Officer Williams that he had made the purchase of heroin which he gave to Officer Williams, and Officer Williams placed this defendant under arrest and informed him of this, why he was being placed under arrest at this time.

Q Did the officer remain in the drug store with the informant at that time?

A When this person, when the defendant left out of the drug store, the two of them was in the drug store together, yes.

Q Officer Williams?

A Yes.

Q Have you, have you talked to Officer Williams with regard to this case, and did Officer Williams state whether or not the informant had contacted with any other people in the drug store?

A No, no, no. The informant just stood along side of Officer Williams at the telephone booth in the drug store.

Q You had occasion to, you had occasion to transport the item recovered to the lab for analysis?

A Yes, I did.

Q And, I show you this lab report, F600119, that is the same true and correct analysis?

A Yes.

Q One foil packet containing .50 unknown white powder, tested by Charles Von Drak and found to be heroin. Did the SE inform you or officer Williams whether he actually made the buy in the conversation with the parties? Did you have a subsequent conversation with the SE? Did he say whether he brought—

A Yes. He indicated that he had just copped from, from the defendant here, John Adams.

Q Okay.

THE COURT: Did they recoup—

MR. EISEN: Q Did you search the defendant?

A Yes I did make a search of the defendant. He didn't have the money. He had given the money to the person with him he had called.

THE COURT: Anything else?

April 28th, 1967

And the Court hearing Counsel for said Defendant in support of said Motion as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premises doth DENY

said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

And the said Defendant by his Counsel now here answers he is ready for trial.

On Motion of the State's Attorney, Counsel for the People, it is ordered by the Court that this cause be and the same is hereby continued until May 2nd, 1967, without Subpoenas, at 1:00 P.M.

Form 53A

UNITED STATES OF AMERICA

State of Illinois,)
) ss.
Cook County,)

Pleas, made before a branch of the Circuit Court of Cook County, in said County and State, begun and held at the Circuit Court, in the City of Chicago, in said County, one thousand nine hundred and SIXTY SEVEN and of the Independence of the United States the one hundred and NINETY FIRST

Present: Honorable JOHN S. BOYLE
Judge of the Circuit Court of Cook County.

JOHN J. STAMOS
State's Attorney

JOSEPH I. WOODS
Sheriff of Cook County

Attest:

JOSEPH J. McDONOUGH
Clerk

And afterwards, to-wit: on May second in the year last aforesaid, there being present Honorable Jacques F. Heilingoetter Judge of the Circuit Court of Cook County, Illinois, JOHN J. STAMOS State's Attorney, JOSEPH I. WOODS Sheriff, and JOSEPH J. McDONOUGH Clerk.

The following among other proceedings were had and entered of record in said Court, which said proceedings are in words and figures following to-wit:

Gen. No. 67-641

THE PEOPLE OF THE STATE OF ILLINOIS

vs

JOHN ADAMS

INDICTMENT FOR UNLAWFUL SALE OF NARCOTIC DRUG

This day come the said People by JOHN J. STAMOS, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

Plea of Not Guilty heretofore entered to the indictment in this cause.

And now issue being joined and the said Defendant and his Counsel now here propose to waive the intervention of a Jury and submit this cause to the Court for trial and the Court having fully advised the said Defendant of his right to a trial by Jury, the said Defendant still adheres to his proposition to waive such right and by agreement between the State's Attorney, Counsel for the People and the said Defendant and his Counsel, this cause is submitted to the Court for trial and the intervention of a Jury waived; which said Jury Waiver is filed herein and is in words and figures following, to-wit:

Jury Waiver signed

And the Court hearing the Testimony of Witnesses. Stipulated age of Defendant JOHN ADAMS, is now about THIRTY SIX (36) years.

And the State's Attorney, Counsel for the People now here rests.

Counsel for said Defendant now here moves the Court at the close of the State's case, to find the said Defendant Not Guilty in this cause.

It is ordered by the Court that the hearing on the Motion in this cause be and the same is hereby continued until May 3rd, 1967.

DCS 1150 Form 53B

And afterwards, to-wit: on May third in the year last aforesaid, there being present Honorable JACQUES F. HEILINGOETTER Judge of the Circuit Court of Cook County, Illinois. JOHN J. STAMOS State's Attorney, JOSEPH I. WOODS Sheriff, and JOSEPH J. McDONOUGH Clerk.

The following among other proceedings were had and entered of records in said court, which said proceedings are in words and figures following to-wit:

Gen. No: 67-641

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

JOHN ADAMS

INDICTMENT FOR UNLAWFUL SALE OF NARCOTIC DRUG

This day come the said People by JOHN J. STAMOS, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

This cause coming on before the Court for a hearing on the Motion to Find the said Defendant Not Guilty, heretofore entered here-in in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premises doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

And the Court hearing the further Testimony of Witnesses.

And Counsel for said Defendant now here rests.

And the Court hearing Testimony of Witnesses in Rebuttal. *

Counsel for said Defendant now here moves the Court at the close of all evidence to find the said Defendant Not Guilty in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premises doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

And the Court hearing the Arguments of Counsel and being fully advised in the premises doth FIND the said Defendant JOHN ADAMS, guilty of unlawful sale of narcotic drug in manner and form as charged in the indictment.

Counsel for said Defendant now here moves the Court for a New Trial in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premises doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

Counsel for said Defendant now here moves the Court in Arrest of Judgment in this cause.

And the Court hearing Counsel for said Defendant in support of said Motion as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premise doth DENY said Motion and orders that said Motion be and the same is hereby DENIED accordingly.

And now neither the said Defendant nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the finding of guilty, heretofore entered and the judgment rendered to the indictment in this cause.

THEREFORE, it is considered, Ordered and adjudged by the Court that the said Defendant JOHN ADAMS, is guilty of the said crime of unlawful sale of narcotic drug in manner and form as charged in the indictment in this cause, on the said finding of guilty.

Testimony heard in Aggravation and Mitigation.

THEREFORE, it is Ordered and adjudged by the Court that the said Defendant JOHN ADAMS be and

he hereby is sentenced to the Illinois State Penitentiary, for the crime of unlawful sale of narcotic drug in manner and form as charged in the indictment whereof he stands convicted, for a term of years not less than TEN (10) years, nor more than THIRTEEN (13) years, for the crime whereof he stands convicted, and it is further ordered and adjudged that the said Defendant JOHN ADAMS, be taken from the bar of the Court to the Common Jail of Cook County; and from thence by the Sheriff of Cook County to the Illinois State Penitentiary, and be delivered to the Department of Public Safety and the said Department of Public Safety is hereby required and commanded to take the body of the said Defendant JOHN ADAMS, and confine him in said Penitentiary, according to law, from and after the delivery thereof until discharged according to law, provided such term of imprisonment in said Penitentiary shall not be less than TEN (10) years, nor more than THIRTEEN (13) years, for the crime for which the said Defendant was convicted and sentenced.

IT IS FURTHER ORDERED that the said Defendant pay all the cost of these proceedings, and that execution issue therefor.

And the Court now here advises the said Defendant of his right to an Appeal.

Counsel for said Defendant now here enters and files Notice of Appeal in this cause; which said Notice of Appeal is in words and figures following, to-wit:

TO THE SUPREME COURT OF ILLINOIS

Appeal From the Circuit Court of Cook County
County Department—Criminal Division

Number 67-641

PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF-APPELLEE

vs.

JOHN ADAMS, DEFENDANT-APPELLANT

HONORABLE JACQUES F. HEILINGOETTER Trial Judge

NOTICE OF APPEAL

An Appeal is hereby taken from the final Judgment entered in the above entitled cause.

Appellant's Name: John Adams

Appellant's Address: County Jail

The name and address of Appellant's Attorney:

Name of Attorney: Charles B. Evins & Sam Adam

Address: [Illegible]

Telephone: [Illegible]

The Offense: Sale of Narcotics

The Judgment: Guilty of Sale of Narcotics
on a (Finding) (Verdict).

The Date: May 4, 1967

The Sentence: Ten to Thirteen Years

/s/ John Adams
Defendant-Appellant

By: /s/ [Illegible]

Dated May 3, 1967

[Filed May 3, 1967, Joseph J. McDonough, Clerk
of the Circuit Court, Criminal Division]

Louis J. Garippo

Direct Inquires to: John J. Altman
Associate Clerk-Criminal Division
2600 South California Avenue
Chicago, Illinois, 60608

Notice of Appeal

Index of Witnesses on the trial

Oral Argument on Motions

THE CLERK: The People of the State of Illinois
versus John Adams.

MR. EVINS: Good morning, Judge.

THE COURT: Good morning.

MR. EVINS: Judge, this is Mr. Adam, my associate
and partner in this case.

MR. ADAM: Good morning, Judge.

THE COURT: Good morning.

MR. EVINS: Judge—

THE COURT: Yes?

MR. EVINS: —we are ready for trial today, but at
this time I would like to present to the Court our motion
to dismiss this indictment on the grounds that at least
one of the principle points he alleges at the time of the
Preliminary Hearing in this matter, the defendant, Mr.
Adams, in this case was not represented or furnished
Counsel; and you have a document there before you which
incorporates all of our reasons set forth.

MR. FLAUM: Your Honor, the State, through myself,
has not been in receipt of a—

MR. ADAM: You have not?

MR. FLAUM: —any motions.

MR. ADAM: Judge, we filed our Motion To Dismiss
The Indictment; notice of proof of service in the State's
Attorneys Office yesterday.

MR. FLAUM: I have not received it, your Honor. I
checked my individual mail slot this morning, it was not
there, and now, perhaps, it is in our office, but I have
not been in receipt of it yet.

THE COURT: Do you want to pass this for a mo-
ment?

MR. FLAUM: If any other motions are to be pre-
sented to your Honor, let him present them now, and we
might then pass this so we can check.

MR. EVINS: One other motion. Mr. Adam will pre-
sent that one.

MR. ADAM: Judge, that is a motion also for a Bill
of Particulars. Specifically, we are asking: "When, where,

what time the alleged offense and sale of narcotics were perpetrated." We are also asking the amount of money allegedly used in order to perpetrate it. We are also asking that the correct and true and accurate name of the alleged purchaser known at the time, Al Nichols, be furnished to the defendant and his attorney; and his present address and phone number; or in the alternative, we ask that he be made available prior to trial for us to interview him.

MR. EVINS: We can interview him this morning.

MR. FLAUM: Your Honor, with all respect to Counsel, I think the State ought to have a little time to pursue the motions which come at a late hour. So, I suggest that we pass this so that I can at least obtain a copy of the motions.

MR. EVINS: I have a copy.

MR. ADAM: Here they are. Yes, Mr. Townsend filed them yesterday. Those are my copies.

THE COURT: We will pass this for a few minutes.

(Short recess taken.)

(After an interval of time the following proceedings were had in the above-entitled cause.)

THE COURT: Proceed with these motions.

MR. FLAUM: Fine, your Honor. Your Honor, may we proceed?

THE COURT: Yes.

MR. FLAUM: Ready to proceed, Mr. Adam?

MR. ADAM: Yes.

MR. FLAUM: Your Honor, turning first to the Bill of Particulars, point one, it asks for "Where and what time the alleged offense occurred." I already informed Mr. Evins our information is that the offense occurred on January 4, of this year, 1967; approximately 2:30 to 3:00 o'clock in the afternoon; the area of Orleans and Clark. How that alleged sale was perpetrated, we suggest is evidence and unable answer at this time. With regard to point three, the money allegedly to have been used to commit the offense, we have given the sum to the counsel for the defendant. Point four, speaks of the true and correct name of the purchaser in this case, and

our information is that his proper name is Albert Bradley. Five; your Honor, we suggest all the said information independent and applicable to each count in an indictment such as this cause is vague.

THE COURT: Anything else you want to say in this connection, Mr. Adam?

MR. ADAM: With regard to this motion, Judge, there is one other thing that is this: we are also, although we may not have specified it in the motion, nonetheless, in authorities that we have cited to you *Roverio vs United States*, footnotes, we are also asking for the opportunity prior to trial to interview and to discuss the testimony of Albert Nichols alias Albert Bradley, with him, prior to trial, because he is a witness for the State and we are—

THE COURT: You said something initially about asking in the alternative about the names that he be present. Is it the State's intention to call him? Will he be present?

MR. FLAUM: Yes, your Honor, it is the State's intention to call such parties and all State's witnesses will be in Court prior to Court and available.

MR. ADAM: Fine.

THE COURT: I think that covers everything, then?

MR. FLAUM: Yes.

THE COURT: I would deny that one, number two, I believe Mr. Adam indicated, "How and what manner—"

MR. FLAUM: And five, your Honor?

THE COURT: I do not understand specifically what is meant by that, Mr. Adam.

MR. ADAM: Where is that?

THE COURT: With regard to five.

MR. EISEN: Counsel will waive the normal written Bill of Particulars?

MR. ADAM: Yes.

MR. EVINS: Yes.

MR. ADAM: Yes, Judge, five refers—it has been answered by the information that we have been given, that has been furnished to us in four.

THE COURT: I see.

MR. FLAUM: So that concludes that motion, your Honor.

Turning to the Motion To Dismiss The Indictment, which we ask to be denied on the basis that this motion that the defendant filed failed to have counsel appointed for him at the preliminary hearing, before the Honorable Kenneth R. Wendt; your Honor, is well familiar with the authority which does not require the appointment of counsel without demand at the preliminary hearing, in that the record does not reflect any such demand. For authority on this we cite *People versus Morris*, 30 Illinois 2nd, 406, cited in 1954.

MR. ADAM: *People versus Nicks* you said?

MR. FLAUM: *Morris*.

MR. ADAM: *Morris*. Judge, if I may answer that briefly?

THE COURT: Yes.

MR. ADAM: First of all I ask the State to first stipulate about the question in the latter that the defendant was not provided with counsel at the preliminary hearing. We set forth the transcript as an exhibit to our motion so that will not come up again.

MR. FLAUM: Your Honor, the State will not enter into that stipulation.

THE COURT: I did not hear?

MR. FLAUM: The State will not enter into that stipulation.

MR. ADAM: Well, then, Judge, we revert to Old Common Law Pleading, what is alleged and not denied is admitted. You remember those "Old Common Law Days?"

MR. EVINS: Yes, I remember.

MR. FLAUM: Your Honor, we have not had an opportunity to examine the record in depth, and we feel that regardless of the position taken below, in the courts, that the motion falls; by way of the authority, *People versus Morris*, regardless of any warning regarding Counsel—

THE COURT: I can appreciate this, Mr. Adam, we all know that the State just looked at these motions now—

MR. ADAM: Yes.

THE COURT: —they would not be in any position to stipulate to this.

MR. ADAM: Judge, will you allow us to have the defendant sworn?

THE COURT: Swear the defendant, please.

JOHN ADAMS,

was called as a witness on behalf of himself, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. EVINS:

Q Your name is what?

A John Adams.

Q And you are the defendant in this case, are you not?

A Yes, sir.

Q And Mr. Adams, you were interrogated in a preliminary hearing in this building, Branch 57, were you not?

A Yes, sir.

Q Were you not?

A Yes, sir.

Q And what is the date of that?

MR. EISEN: February 10.

MR. EVINS: Q Or on or about February 10, you were in Branch 57, Narcotics Court, is that right?

A Yes, sir.

Q And at that time there were certain—you were the defendant in this case, is that right?

A Yes, sir.

Q And that case, which is entitled the Case of the People of the State of Illinois versus John Adams, charge is Unlawful Sale of Narcotics, which was and is the same case for which you have been subsequently been indicted, is that right?

A Yes, sir.

Q And at the time that you appeared there at this preliminary hearing, you appeared before Judge Wendt, is that right?

A Yes, sir.

Q Now, did you have an attorney, a lawyer representing you at that hearing?

A No, sir.

Q Did Judge Wendt appoint an attorney to represent you at that hearing?

A No, sir.

MR. ADAM: That is all.

MR. EVINS: That is all.

THE COURT: Yes.

MR. FLAUM: We have no questions, your Honor. I would like to make just a short reply with regard to the inability of the State to stipulate that the record furnished by the defense in this cause as an appendix to the motion to dismiss the indictment reflect why we are unable to at this time to make any stipulation. Counsel just asked the defendant under oath if he were interrogated and no where in this record is the defendant in any way appear by way of questions and answers or in any verbal statement. It is for that reason, your Honor, that the State cannot enter into a stipulation as I am sure the defense can appreciate.

MR. ADAM: Yes.

MR. EVINS: Yes.

Q Let me ask you this: there was certain evidence that was taken at that preliminary hearing before Judge Wendt, was there not?

A Yes, sir.

Q Certain officers for the State testified?

A Officers.

Q Is that right?

A Yes, sir.

Q And they testified in your case which you were the defendant, is that right?

A Right. Yes, sir.

Q And after they testified you then were held to the Grand Jury, right?

A Right. Yes, sir.

MR. EVINS: That is all.

MR. ADAM: Judge,—

THE COURT: Yes?

MR. ADAM: —I would say this there is only one case in the State of Illinois, and that is the case I have cited pardon me, that the State cited on this question, and that is the case of People versus Morris. However, I want to point out to your Honor, that People versus Morris was decided before Escobedo versus Illinois; before Miranda versus Arizona and more important, it was decided previously to the Illinois Statutes. And the Illinois Statute, I think we have set forth this, 1—8-1 or 109-1, compels and makes it non-discretionary with the Preliminary Hearing Court to appoint counsel. It is not a matter which the Judge may do. It is a matter which he shall do. And the Judge was derelict in his duties and failed to perform the act required of him by the Illinois Legislature, by their statute, which, as I say, was a statute successfully enacted after People versus Morris. And the only remedy that a defendant had, who had been indicted has in such a situation would be to move the court to dismiss the indictment and remand the case, or to just to dismiss the indictment and have the State proceed, if they elect to so proceed, with a preliminary hearing in this matter, as the defendant is entitled to under the statute.

MR. FLAUM: Your Honor, in response, we would only say that while admittedly, People versus Morris was decided prior to Escobedo and Miranda, the law in Illinois, and we believe under the holdings of the Supreme Court has not afforded the critical stage of the proceeding to become that of a preliminary hearing. I ask your Honor to note in that record before him the defendant in no way implied ~~he~~ has been. Now, he is represented by two able counsel, Plea of not guilty entered, I believe is entered at this time. So, your Honor, we feel that the motion, based on those representations should be denied.

MR. EVINS: Which time are you referring to, Counsel, Mr. State's Attorney?

MR. FLAUM: That time, plead not guilty at the preliminary hearing, is that correct.

MR. EVINS: And you said that he was represented by two able counsel?

MR. FLAUM: No.

MR. EVINS: When was this?

MR. FLAUM: I said presently he is represented by two able counsel, and has been for sometime.

THE COURT: You are not going to debate that, are you?

MR. EVINS: Yes, that is quite debateable.

MR. ADAM: I would not debate that.

THE COURT: Is there anything further, gentlemen?

MR. EVINS: That is all, Judge.

* * *

"The court does not believe that the preliminary hearing is a critical stage. Therefore, the motion will be denied."

Further Oral Argument on Motions

WILLIS NANCE, called as a witness on behalf of the People, having been first duly sworn on oath testified as follows:

DIRECT EXAMINATION

BY MR. FLAUM:

My name is Willis Nance. I am a Chicago Police Officer assigned to Vice Control Division, Narcotic Unit. I been so assigned for three years.

On January 4, 1967, Officer Williams and I met with a special employee named Albert Bradley at 1121 South State Street. After having a conversation with Mr. Bradley, I searched him and found him to be free of money and narcotics. He was given \$19.00 in pre-recorded funds for which he signed. He was then driven to 18th and Wabash where he entered a tavern. He later came out with a person now known to me to be JOHN ADAMS.

Q What if anything did you do after that conversation with Mr. Bradley?

A Moments later I saw Mr. Bradley and Mr. Adams leave the tavern and they were walking across the street and boarded a bus on the northeast corner.

Q What if anything did you do, Detective Nance?

A I proceeded to the area of Orleans and Oak Street in which Mr. Bradley, the informer, had told us—I proceeded to Orleans and Oak Street as we had previously arranged. I saw the informer and Mr. Adams in the area of a drug store on the Corner of Oak and Orleans. I parked the car about a half block north of the drug store and Officer Williams left the vehicle. I circled the block several times in this particular area. About fifteen minutes later I saw Officer Williams with the Defendant in custody.

CROSS EXAMINATION

BY MR. ADAM:

I made a police case report of the events of January 4, 1967. The report contained the events surrounding the controlled purchase of narcotics, and the arrest of the defendant. I testified before the Grand Jury and the informer was also called as a witness and testified.

I first met the informer about 1:30 on January 4, 1967, at the Narcotic Unit. I arrested the defendant about an hour later. I had a conversation with the informer at the narcotic unit and Officer Williams and I drove the informer to 18th Street and Wabash Avenue. The informer got out of the car and went into a tavern. Officer Williams and I remained in the car. Officer Williams did not enter the tavern. I did not go into the tavern. The informer came back to the car and we left the area. I don't know where the defendant was when the informer came back to the car.

MR. ADAM: Q Now, I ask you, Officer Nance, to look at the document that I am handing to you and tell his Honor what the document is?

A This is a general case report, sir.

Q And is this your case report?

A Yes, sir, I would say this was my report.

Q And now, I ask you to look at this case report and look at it and tell his Honor whether you made this case report out, so there's no question about it being your case report? Did you make this out?

A To the best of my ability, Mr. Adam, yes, sir.

Q And when you made it out, did you put on there the day you made it out?

A Yes, sir, the date, yes, sir.

Q What date is that?

A The 4th of January, 1967.

Q And that would be the same day as the event, the day of this alleged offense, is this correct?

A Yes, sir.

Q And now, in that report which you made out on the same day, did you state in there that the informer went into the tavern at 18th and Wabash?

A It is not in the report here, sir.

Q Did you make out any written memorandum in which it stated that the informer went into a tavern?

A Not to my knowledge, sir, I can't recall.

Q Well, if there were any written memorandum, it would be in that report, wouldn't it? There is no other written memorandum, is there?

A Yes, I assume it would be, sir, yes, sir.

Q When you say you assume, you mean you didn't make out any other memorandum, is that right?

A Perhaps you could say that, sir.

Q Well, would you say that?

A Repeat the question?

Q Would you say that this was the only written memorandum of the events and occurrences of January 4, 1967 that you made out, or that you have seen?

A Yes, sir, I would say so, sir, yes.

Q Now, in that written memorandum or case report, do you say anywhere in there that the informer came back to your car at 18th and Wabash after you let him out?

A What is the question, Mr. Adam?

Q Did you say in your report that you let the informer out of your car and that he came back to your car?

A In the report, no, sir.

Q After the informer came back to your car, did he get in the car?

A Yes, sir.

Q And where was the defendant at that time, if you know?

A I don't know, sir.

Q Did you ever know the defendant prior to this day?

A No, sir.

Q How long was the informer in the tavern prior to his coming back to your car?

A A very short while, sir.

Q Five minutes?

A Perhaps, sir.

Q And now, after the informer came back to your car and got in your car, did he get out of your car?

A Yes, sir.

Q And where did he go then?

A I don't know, sir.

Q Where did you go?

The informer got out of the car, I don't know where he went. He walked toward the alley to the corner of the alley and he disappeared from my vision. I do not know where he went. Officer Williams did not follow him, nor did I. About five minutes later the informer returned to the car alone.

Q Up to this point you had not seen the defendant?

A No, sir.

The first time the informer came back to the car he got into the car and sat on the rear seat.

Q And then, he left again, is that right?

A Yes, sir.

Q Now, where did he go this time?

A I don't know. He went in the same direction in which he went the first time.

Q And now, he went in the same direction and disappeared in the same spot, is that right?

A Yes, sir.

Q Did you follow him the second time, this time?

A Yes, sir, I got out of the car the second time, yes.

Q And you followed him?

A I stood at the mouth of the alley, mouth of the alley.

Q Did you see where he went?

A No, sir.

Q What did Officer Williams do?

A I assume he sat in the car. Officer Williams did not come to the mouth of the alley with me. The informer was out of my vision for four or five minutes the second time. This time he appeared in front of the tavern with Mr. Adams. The informer and Mr. Adams walked across the street to the northeast corner of 18th and Wabash and got on the bus.

Q Did you see them get on the bus?

A Yes, sir.

Q Did you follow the bus?

A Yes, sir.

Q Where did you go?

A I went in the area of Orleans and Oak, sir.

Q So you did not follow the bus there, did you?

A No, sir.

I got there before the bus. I don't know whether they got off the bus or not.

Q And when you got there, did you see the defendant and the informer alite from the bus?

A I can't really recall, sir, but I did see them in that area, sir.

Q Well, you don't know, then whether they got off the bus or not?

A No, sir.

Q Prior to coming there?

A No, sir.

Q And as far as you know, the informer could have gone anywhere with or without the defendant prior to your seeing them at Oak and Orleans, isn't that right?

A Yes, sir.

Q Now, how long a period of time elapsed from the time you saw them board the bus at 18th and Wabash and at the time you saw them at Oak and Orleans?

A May 15 minutes or so, 20, it would be a little more either way. I saw the informer and Mr. Adams walking toward the drug store. Officer Williams had alited from the car and I assume he was in the drug store. I did not see either one of them enter the drug store. The car was parked a half block north of the drugstore.

Q Did you see him enter the drug store?

A No, sir, I can't say that I saw him enter.

Q How long a period of time elapsed between the time Officer Williams got out of the car, walked back toward the drug store, and the time you saw the Defendant and the informer walk toward the drug store, how long a period of time elapsed?

A Perhaps more or less simultaneously, I would say. Officer Williams beat them into the drug store maybe a minute or two.

Q And you just sat in the car?

A Yes, sir. I moved the squad car from time to time so I wouldn't be made to be sitting right there.

Q Were you parked north or south of the drugstore?

A I parked north of the drug store, sir.

Q So when you looked back at the drug store, you were looking through your rear view mirror, is that it?

A Yes, sir, either way, either looked back or either looked through my rear view mirror.

Q And now, after they were in the drug store for a period of time, how long before you first saw either Officer Williams, the informer or the defendant?

A Well, I saw Mr. Adams right—Mr. John Adams, that is, right away.

Q Coming out of the drug store?

A He came out of the drug store after, maybe 5 or 10 minutes, maybe.

Q And Officer Williams and the informer remained in the drug store?

A Yes.

Q And when Mr. Adams came out of the drug store, this was the first of the three that you saw, is that right?

A Yes, sir.

Q Now, you do not know what any of the three did in the drug store, do you?

A No, sir.

Q And you saw Mr. Adams leave the drug store alone, is that correct?

A Yes, sir, he walked around the block.

Q Completely around the block?

A There is a little—there's a little lot there, little cut-off spot, half a block, yes, sir, he walked around the block.

Q And was he out of your vision?

A For a moment he was, yes.

Q And you saw him meet with another man, you said?

A Well, when he got back to where he started from, then, about that time, the other male Negro appeared on the corner with Mr. Adams.

Q And they just talked, is that right?

A So far as I know.

Q You could not hear what they said?

A No, sir.

Q You were in the car?

A Yes, sir.

Q You were driving around the block?

A Yes, sir.

Q And so while you were going around the block, as they were standing there, talking, or whatever they were doing, you couldn't see them during this period of time, could you?

A Well, let me explain this to you this way; at the time I first saw Mr. Adams come out of the drug store, or where he came from, and walk around the little short block, the other male Negro appeared at the time he circled the block. He took his time walking around the block. I moved the squad car from where I was, thinking they were going to come and stand right up where I was, so I moved the squad car right at this time.

Q I see. And after you moved the squad car, while you were moving the squad car, you were watching the traffic, weren't you?

A Of course, sir.

Q You are a careful driver?

A Yes, sir.

Q And being a careful driver, you were watching other traffic, and so forth, on this two-way street, isn't that right?

A Yes, sir.

Q And also, you were going around the block, so that no one would observe you were watching, isn't that right?

A The only time I went around the block was later on, right at the time that they had made contact with each other, I moved the squad car.

Q When you say contact, you mean talk?

A Talking to each other, yes.

Q Now, did you see the defendant walk back towards the drug store?

A I saw him cross the street, and then when I got back around the block, I did, eventually, back around. I didn't see anybody.

Q Not even Officer Williams?

A No, sir.

Q Did you see the defendant walk to the drug store?

A No, sir, the defendant, the last time I saw the defendant, he crossed the street on the east side and began to walk south, and at that time I moved my car.

Q So that the next time after that you saw the defendant was when he was under arrest?

A Yes, sir.

I had a conversation with the defendant in the presence of Officer Williams and Albert Bradley. The defendant was then taken to 11th Street searched and processed.

Q Did you find any narcotics on his person?

A No, sir.

Q Did you find any marked money?

A No, sir.


Q Had the money, the serial numbers of the money been pre-recorded before you gave it to the informer?

A Yes, sir.

Q Had you dusted the money with fluorescent powder?

A No, sir.

Q Had you put a wire recording device on the person of the informer prior to leaving 11th Street?



A No, sir.

Q Did you search the informer at 11th Street?

A Yes, sir.

Q This is prior to going to 18th and Wabash?

A That's correct, sir.

Q Where was the informer released?

A In the rear of the tavern.

Q No, I don't mean that, where was the informer released after the defendant was arrested?

A We put him in one room and the defendant in another room, sir.

Q And then you just let the informer go, is that correct?

A Yes, sir.

Q He wasn't searched a second time, was he, at 11th Street?

A Not to my knowledge, sir.

Q You didn't search him?

A The informer?

Q Yes.

A Not to my knowledge, sir.

Q You didn't see anybody search him?

A Not to my knowledge, sir.

Q I am talking about after the arrest, he was not searched again.

A No, sir, not to my knowledge.

The informer does not have any cases pending on him at this time to my knowledge. He may have had some pending on January 4, 1967. I appeared in Felony Court with him on a case. I don't know whether this was prior or subsequent to January 4, 1967. I believe he was charged with Criminal trespassing. I spoke to the State's Attorney regarding his case. He asked me to help him out and I told him I would try. I don't recall what happened to the informer's case.

MR. ADAM: Q Well, prior to the 4th of January, 1967 did you appear with the defendant—with the informer at any other place; in order to help him with other pending charges, other than the one you just testified to?

A Yes, sir, I might have.

Q Well, would this be narcotics court?

A Yes, sir.

Q Is the informer a narcotic addict?

A Yes, sir.

Q Did you pay the informer for your information?

A We sometimes give the informer money.

Q Well, we are not talking the informer, we are talking about this informer. Did you pay him for this transaction?

A I would answer yes.

Q You did pay him?

A Yes, sir.

Q How much money did you pay him?

A It varies, sir.

Q Well, how much did you pay him in this case?

A Oh, 10 or 15 dollars sometimes, sir, it depends on his needs, I guess.

I don't know what the informer's intake of narcotics was on January 4, 1967. I have an opinion of the informer's addiction on January 4, 1967. My opinion was that the informer was an addict.

I questioned Mr. Adams at the scene and again at 11th Street. Some of the time the informer was present. I tried to leave an impression on Mr. Adams that the informer was under arrest at the beginning.

Q All right. Now, did you ever recover any money?

A No, sir.

Q None of the marked money was recovered.

A No, sir.

REDIRECT EXAMINATION

BY MR. FLAUM:

I parked my car in the rear of the tavern and Mr. Bradley exited from the car. He was gone four or five minutes and he returned back to the car. When he left the car this time I followed him to the mouth of the

alley. I saw Mr. Adams and Mr. Bradley board a bus.

Q What if anything did you do next?

A I went back to the squad car and drove to the area of Orleans and Oak Street.

ALBERT BRADLEY, called as a witness on behalf of the People, having been first duly sworn, on oath and testified as follows:

DIRECT EXAMINATION

BY MR. EISEN:

My name is Albert Bradley. I am also known as Al Nichols. Bradley is my true name. I reside within the City of Chicago, on the south side. On January 4, 1967 at about 1:30 in the afternoon I went to 1121 South State Street. I met with Officer Nance and Officer Williams. I had a conversation with them. After the conversation I was taken in the back room and was searched, found to be free of money and narcotics and I was given \$19.00 in recorded money of which the serial numbers had been recorded. Officer Williams, Nance and myself then drove to 18th and Wabash. They parked the car in the parking lot and I got out of the car and went in the tavern known as "57 Club".

Q What happened at the tavern?

A Then I contacted the defendant.

Q And how did you get in contact with the defendant at that time?

A On the telephone.

Q Who made the telephone call?

A I got someone to make the call.

Q Do you know who made the telephone call?

A Yes, I do.

Q And who was that?

A His brother.

I talked to the person on the phone. The person that I talked to was the Defendant Adams.

Q And what is the defendant's name?

A John Earl.

MR. ADAM: John what?

THE WITNESS: John Earl.

MR. EISEN: Q Is that all you know as?

A That's all I know him as.

Q You say you talked to John Earl at that time on the telephone?

A Yes, I did.

Q And would you relate the conversation that you had at that time, to the Court?

A I told him I had some money and I wanted to cop.

Q And what does the word "cop" mean to you?

A It means to buy some narcotics.

Q Is that a common street term?

A Yes, it is.

* * *

I told John Earl I wanted to cop and he said he would bring it down.

* * *

Q And then what did you do at that time?

A Stayed in the tavern and waited on him, and went back and informed Officer Nance what I was going to do.

Q When you went back to inform Officer Nance, where did you go?

A I went back to the parking lot where he was parked.

Q With Officer Nance when you went back to the car?

A Yes, I did.

Q And after you had that conversation, what did you do?

A I waited until John Earl came.

Q And where did you wait?

A I waited in the tavern.

Q You went back to the tavern then?

A Yes.

Q Approximately how long did it take for John Earl to come there?

A Oh, about 15 minutes, something like that.

Q And where did you meet John Earl there?

A In the tavern.

Q What occurred in the tavern at that time?

A What occurred?

Q Yes.

A He asked me where did I get the money from, because he knew I didn't have any money earlier.

MR. EISEN; Q Who asked you that?

A John Earl.

Q And what was your reply?

A I told him I got it from a friend.

Q What did you then do at that time?

A At that time I gave him the money, and we proceeded to go—

Q Did you say you gave him the money. What money was this?

A The recorded money.

Q You gave this to him in the tavern at that time?

A Yes.

Q And what did you do?

A From there we left there and caught a bus and went to the north side, to Chicago Avenue, and from Chicago Avenue goes down to Orleans.

Q Was this on the bus, the Chicago Avenue bus?

A On the bus.

Q And now, from the time you met the defendant until the time you got to Chicago Avenue and Orleans, did he ever leave your presence or did you ever leave his presence, or were you with him at all that time?

A All the time until we met the person he was supposed to meet, yes.

We went to the Rexall Drug Store on the corner of Orleans and Oak Street. Officer Williams was in the drug store. The defendant made another phone call, and I over heard the conversation. The defendant told the party that he was here.

Q What then happened?

A And then the defendant met with another man, right on the corner, I'll say about 25 or 30 feet, you know, from the corner.

Q And how long did it take before the other man arrived?

A About 10 minutes, something like that.

The Defendant met with another male and they crossed over the street to the east side and he beckoned for me. I came out of the drug store and walked across the street and received the package and gave it to Officer Williams.

Q When you say you walked, where were you walking to?

A To catch the bus.

Q On Chicago Avenue?

A Yes.

Q And what happened when you reached Chicago Avenue and Orleans?

A Officer Williams pulled us off the bus, as soon as we were stepping on the bus.

CROSS EXAMINATION

BY MR. ADAM:

I did not make a written statement regarding the events that occurred on January 4, 1967. I testified before the Grand Jury. I was given \$19.00 in prerecorded funds and I went to 18th and Wabash. I went there by car. Officers Williams and Officer Nance were with me. It was a cold day. The car was parked in a parking lot behind the Calvert Hotel. I got out of the car and went in a tavern named the 57 Club. I met the defendant's brother in the tavern. The defendant's brother is named Joe something. I don't know his last name. I asked him for the defendant's telephone number and he dialed the number for me. I did not see the number he dialed. I don't know the defendant's telephone number. I don't know where his brother called to. I spoke to the defendant on the phone.

Q And now, tell us again all that conversation that you had on the telephone?

A All of it?

Q All of it?

A I just told him I had some money and I wanted to cop.

Q That's all you said, hello, and I have some money, I want to cop, is that right.

A That's what I told him.

Q And what did the voice say?

A He said, "I will be right down."

Q And what did you say?

A I said, "Okay."

Q And what did the voice say?

A No one said nothing else after that.

After the phone call I went back to the car where Officers Williams and Nance were parked. I did not get into the car. They did not get out of the car to my knowledge. I went back into the tavern.

Q When you got back into the tavern, was the Defendant there?

A No.

Q How long a period of time elapsed before the defendant arrived?

A About 10 minutes.

Q And how long a period of time elapsed between the first time you went in the tavern, before you made phone call, and to the time when you finally saw the defendant?

A What did you say?

Q How long a period of time elapsed between the time you first arrived at the tavern, prior to making the phone call, and the time you first saw the defendant?

A What did you say?

Q How long a period of time elapsed between the time you first arrived at the tavern, prior to making the phone call, and the time you first saw the defendant?

A Oh, about 15, 20 minutes, something like that.

Q And there were some other people in the tavern?

A Yes.

Q How many would you estimate?

A I wouldn't know.

Q Ten?

A I wouldn't know.

Q Twenty?

A I wouldn't know.

Q More than one?

A Yes, more than one, definitely more than one.

Q Did you have a conversation with any of these people?

A In the tavern?

Q In the tavern?

A Yes.

Q Who else besides Joe?

A I don't know.

Q Do you remember anybody else you had a conversation with?

A No, I don't.

Q Did you go to the washroom?

A Did I go to the washroom?

Q Yes, did you go to the washroom?

A I don't remember that I went to the washroom or not.

Q Did you have anything to drink?

A Did I have anything to drink?

Q Yes, did you have anything to drink?

A Yes, I drank a coke.

Q In the tavern?

A In the tavern? Yes, in the tavern.

Q What did you drink in the tavern?

A A coke and some wine.

Q How much wine?

A Oh about, it was about, oh, that much. (Indicating.)

Q When you say that much, you are pointing with your two fingers, an inch and a half, is that right?

A Inch and a half, yes, approximately.

Q Was that a shot glass or out of a bottle?

A It was out of a bottle.

Q Did you buy it?

A Yes.

Q Did you buy it with the \$19 that was given to you?

A No.

Q You had other money?

A Did I have other money?

Q Yes. Did you have any other money other than the \$19?

A No.

Q Well, how did you buy it, then?

A When I went into the tavern.

Q What did you buy it with?

A I got 60 cents.

Q Then you did have other money?

A No, not on me, no.

Q Where did you get the 60 cents?

A From a guy in the tavern.

Q You borrowed it from him?

A No, I didn't borrow it, I just said I wanted a taste.

Q So you took his 60 cents?

A Whose 60 cents?

Q The guy in the tavern?

A One of the studs.

Q You took one of the studs' money?

A Did I take the studs' money?

Q Yes, can't you understand my questions? Did you take this money and buy some wine?

A No, I didn't take the money.

Q Well, how did you get the money to buy the wine?

A They bought it.

Q Who bought it?

A Someone I was drinking with in the tavern, who it was I do not remember.

Q You can't remember the name?

A No.

Q Did you ever know his name?

A How can I know something when I don't remember?

Q How can you know something when you don't remember. I don't know.

Q Did you have any other money, other than the \$19 given by Officers Williams and Nance?

A No, I did not.

Q In what denomination was this money?

A I don't know.

Q You signed for it, didn't you?

A Yes, sir.

Q Did you look at it when you signed it?

A Yes.

Q Was there a \$10 bill?

A I don't know.

Q Was it all one's?

A I don't know.

MR. FLAUM: Your Honor, the witness has answered, it has been asked and answered. He says he doesn't know. He has asked that question about three times?

MR. ADAM: Q How do you know there was \$19?

A I know there was \$19.

Q How do you know it?

A Because I can count.

Q You remember counting it?

A Yes, I had counted it when I received it.

Q You counted the money when you received it. Was it all in bills or was there some change?

A It was in bills.

Q All in bills?

A All in bills.

Q Can you remember if there were any one's?

A There have to be some one's if it is \$19, that's common sense. After the defendant's arrival I did not go back to the car where Officers Nance and Williams were.

MR. ADAM: Q Did you see Officer Williams and Officer Nance again at 18th and Wabash?

A Did I see them again at 18th and Wabash?

Q That's the question.

A No, I didn't see them no more, until we got to the north side. I had a conversation with the defendant early that day.

Q Where was that conversation?

A In my house.

Q Where do you live?

A 1820 something, South Michigan.

Q Where do you live now?

A Where do I live now?

MR. EISEN: Object.

MR. ADAM: Q Where do you live now?

THE COURT: Sustained.

MR. EISEN: Objection, immaterial.

MR. ADAM: Q The other day when we asked you questions in the back room you wouldn't answer them, would you?

A No, I wouldn't.

Q Were you afraid you would incriminate yourself?

A No.

A No.

MR. EISEN: I object to this line of questioning, your Honor.

THE COURT: Sustained.

MR. ADAM: Q Did Officer Williams tell you not to answer them?

MR. EISEN: Objection.

THE COURT: Sustained.

Q Fine, Now, did the defendant come by your house on January 4, 1967?

A No, he spent the night there.

Q With you?

A Yes.

Q Did you tell him that morning that you wanted to buy \$19 worth of narcotics?

A No, I did not.

Q Did you tell him—

Where did he sleep that night?

A He slept on the couch.

Q Where did you sleep?

A In the bed with my wife.

Q He was your house guest?

Q Was he a house guest?

A He was just up there.

Q He was just up there?

A Yes, sir.

Q Who else was there, besides you and your wife?

A That's all.

Q And he was a guest in your home?

A Was he a guest in my home?

Q Yes. Can't you understand what I am asking you?

Was he a guest?

A He was just there.

Q Well, he was there with your permission, wasn't he?

A Yes.

The defendant was in my home as a visitor. He was there with my permission. He wasn't my friend. He was a person that I knew. I let him sleep in my house. This is the first time I ever let him sleep there. He was not a friend of my wife.

Q Did he ask for permission to sleep there?

A Yes.

Q And did you rent him a room?

A No, it's just one room.

Q And you let him stay there?

A Yes.

Q Had you been out with him previously?

A Yes.

Q Where had you been?

A Out on the street somewhere.

Q Where?

A I don't know, just out on the street.

Q You don't remember where it was?

A Just out on the street.

Q Did you drink together?

A Had we been drinking together? Yes, we had.

Q You came back together that night?

A Yes, sir, we did.

Q And he stayed there with you?

A Yes.

Q And this is just a person—how long have you known him?

A Oh, a number of months.

I was not using narcotics that particular day.

Q How long had it been since you had some?

A Day before that.

* * * * *

Q When is the last time you had a shot?

A I think it was last Wednesday, something like that.

Q Almost a week?

A Yes.

Q You haven't had a shot in a week?

A No.

Q Where did you give yourself a shot?

A Where did I give myself a shot?

Q Yes.

MR. EISEN: I will object to that.

MR. ADAM: Q Did you put it in your arm?

A No.

Q Did you put it in your leg?

A No.

Q Where did you take it?

A In my hand.

* * *

Q All right. How long have you been a police informer?

A Oh, for about 15, 16 months, something like that.

The people on the street call me a stool pigeon and the Police Department calls me an informer. Officer Nance and Williams are my friends.

Q And now, did they pay you for this?

A Pay me for what?

Q This transaction?

A No.

Q You never got any money from this.

A Not for making any money.

Q What did you get money for?

A If I wanted something to eat, a few dollars for that, my rent may be behind.

Q They paid for your rent, too?

A If I needed it.

Q Are you working?

A Am I working?

Q Yes.

A Right now?

Q Yes.

A No, I got too many cases to be working right now.

Q What do you mean, cases?

A I got to come to court too often.

Q For your own cases?

A No, I have no cases.

Q You mean to testify?

A Yes.

Q You are a professional stoop pigeon?

A Yes, I am.

Q You go around testifying against people.

A Yes, I do.

Q And now, do you get paid for testifying against them?

A No, I don't.

I am not employed. My wife is not working.

Q Well, you get money everytime you testify, don't you?

A No, I don't.

Q You have no cases pending against you?

A No cases pending against me.

Q And you don't get paid for it?

A No.

Q You don't get paid for your work?

A No.

Q Just only once in a while, you get some money, two or three dollars, is that correct?

A Yes.

Q You don't get paid?

A No.

Q And did any police officers give you narcotics?

A No.

Q But you get it, though, don't you?

A What?

Q Narcotics?

A If I got out on the street and buy it.

Q You get money to go out on the street and buy narcotics?

A Yes.

I had some narcotics last Wednesday. I got money from a friend of mine to buy the narcotics.

I drink sometimes too. I get the money any place I can.

Q Anyway you can. When you say anywhere I can, where do you usually get it from Officer Nance?

A What?

Q Money?

A If need be he would get a drink, yes.

Q Would he give you any money to get narcotics?

A No.

Q How much money would you say you get a week from the Narcotics Unit, on an average?

A I don't know, I don't get any money from the Narcotics Unit.

Q You mean to tell us—correct me if I am incorrect—that you—strike that.

Let me ask you this question; how many cases are there pending in which you are going to testify?

A I couldn't tell you the correct amount, but it is quite a few.

Q How much would you say, approximately?

A Oh, maybe, about 15, or so.

Q Fifteen. Are these all sales of narcotics?

A All sales.

Q Sometimes you mix them up, don't you?

A What do you mean, mix them up?

Q Well, you might be testifying against some person and mixing the facts up with somebody else?

MR. EISEN: Objection.

THE WITNESS: A Impossible.

MR. ADAM: Q It is impossible? Why do you say it is impossible?

A Because it is impossible.

Q Why is it impossible?

A Because I know about all the cases I have.

Q And you have 15, at least pending now?

A I think it is something like that.

Q And you are not getting paid for any of those transactions?

A No.

Q And you are doing this because it is your civic duty, is that right?

A That's right.

Q You are a good citizen, is that right?

A That's right.

Q You are a good citizen, is that right?

A That's right.

Q Have you ever been convicted of any crime?

A Yes, I have.

Q What crime?

A Armed robbery, possession of narcotics.

Q When was this?

A Armed robbery, 1953.

Q Under what name?

A Albert Bradley.

Q Go ahead, go on.

A And in 1957, in the month of May, I was convicted on a possession of narcotics.

Q Under what name?

A Albert Bradley.

Q What else?

A Since that time?

Q Since that time.

A I was convicted of petty theft.

Q Under what name?

A Albert Bradley.

Q Where was this?

A Where was this?

Q Where?

A What do you mean? Here.

Q In Chicago?

A Yes, all of this was in Chicago.

Q Which court?

A Which court?

Q Just tell us what court the petty theft was in?

A Judge Ryan.

Q All right. Did anybody appear with you at the time?

A What do you mean appeared with me?

Q Appear with you, go to Court with you?

A Yes, me and my wife.

Q That's all?

A That's all was there when I got my probation.

Q Didn't anybody appear with you to say you had cooperated with the police department?

A To say I had cooperated with the police department?

Q Yes.

A I don't remember.

I think I asked Officer Nance to appear with me. I think he did appear in court for me. I was convicted and got two (2) years probation.

I gave myself the name of Al Nicholes. I was just known as Al Nicholes when I signed for the money.

MR. ADAM: Q As a matter of fact, this was a name given to you by the Chicago Police Department, wasn't it?

A No, it wasn't.

Q It is not?

A No.

Q Did you ever use any other name with the Chicago Police Department?

A Did I ever use any other name?

Q Yes?

MR. EISEN: Judge, I will object to this, I don't see how it is material.

THE COURT: He may answer.

THE WITNESS: A Yes, I think I have.

MR. ADAM: Q What other names?

A I don't remember.

Q I thought you had a good memory?

A I have.

Q Then tell us what other names you used?

A I don't remember.

Q When was the last time you used any other name?

A About a year or so ago.

Q What was the first name?

A I don't remember.

My real name is Albert Bradley, it is not Al Nichols. I testified before the Grand Jury of Cook County in regard to this case. I was sworn to tell the truth. I was also under oath.

Q That's right. And were you asked this question by the State's Attorney, Mr. Spiro. "Q What is your name please? A Al Nichols."

A Yes, I was.

Q Did you give that answer?

A Yes.

Q And you knew that your name was not Al Nichols when you made the answer? It's not funny to me, is it funny to you?

A How do you know my name is not Al Nichols?

Q I am asking you. Was your name Al Nichols at that time?

A At that time my name was Al Nichols.

Q You had three. You just testified you had another one you didn't remember.

A That was just on a case.

Q Oh, that was just on a case.

Were you asked this question and did you make this answer? "Q Is that your correct name, Al?" "A Yes, sir."

A That was my answer.

I have signed search warrants. I sign them as Al Nichols. To the best of my memory this is the only name I used in signing search warrants. I couldn't estimate how many search warrants I have signed.

Q You got on the bus and went over to Oak and Orleans, is that right?

A Yes.

Q And your guest the previous night, the defendant, paid your way on the bus, didn't he?

A I don't remember.

Q You have a good memory for that day, don't you?

A I don't remember who paid the fare on the bus.

Q You didn't have any money besides the \$19, did you?

A Sure didn't.

Q And you went up to Orleans and Oak Streets with him?

A Yes.

Q And when you were at Oak and Orleans, you got off the bus, is that right?

A At Oak and Orleans I got off the bus?

Q Yes, wasn't it, or was it Oak and Wells?

A First got off the bus at Chicago Avenue.

Q And you walked down from Chicago Avenue?

A No, we rode down Chicago Avenue to Orleans. This was on another bus. We got off the bus and walked to the drug store.

I heard the defendant talk on the telephone. The only thing I heard was "I'm here", Officer Williams just happened to be standing right by the defendant.

Q You just happened to go in there where Officer Williams happened to be?

A No, it was just a routine thing.

Q That's what I just asked you.

A No, it wasn't a coincidence.

Q Williams was in the drug store first, wasn't he?

A Yes.

Q And the defendant went in there after Williams went in there?

A That's right.

Q The Defendant went into the drug store after Williams went in there?

A Well, he was already there.

Q And the defendant happened to go up to the telephone right next to Officer Williams, where Officer Williams happened to be, is that right?

A That's right.

Q He came all the way from 18th and Wabash to this very drug store, that very phone booth right next to where Officer Williams was?

Q The phone, the telephone?

A Yes.

I don't know the number the defendant called. I knew he was going to make a phone call. The defendant had made a call the day before. I was not placed under arrest.

Q Well, were you taken into custody?

A Yes, sir, I was taken into custody, yes.

Q This was to fool the defendant, is that right?

A Yes.

Q This was a pre-arranged thing, wasn't it?

A No, it wasn't.

Q It was not pre-arranged?

A No, it was not.

Q Did you protest your arrest?

A Yes, I protested it.

Q What is the name of the person that came down the street and met the defendant?

A A stud, I don't know his last name.

Q Did you ever see him again?

A Have I ever seen him since then?

Q Yes?

A Yes, I have.

Q He's got a case pending against him now, as a result of your cooperation with the police department, isn't that right?

A No, he hasn't. The defendant was going to put a case on him.

MR. ADAM: Q And all these cases, these 15 cases, approximately, that you are going to testify in, have you used Al Nichols in all those cases?

A Yes, I have, I think I have.

Q Have you ever testified before the Grand Jury that your name was something else other than Al Nichols?

A Off hand I can't remember.

Q And this is a special employee, informer, stool pigeon, is that right?

A Yes.

OFFICER PHILLIP WILLIAMS called as a witness on behalf of the People having first being duly sworn on oath and testified as follows:

DIRECT EXAMINATION

BY MR. FLAUM:

My name is Phillip Williams. I am a police officer of the City of Chicago assign to VCD, Narcotics Division. I been so employed for about four and one half to five years.

On January 4, 1967, about 1:30 P. M. I met with a man I know to be Albert Bradley. I had a conversation with him. We searched him and found him to be free of money and narcotics. We then drove the special employee to the area of 18th and Wabash into the alley.

The special employee got out of the car and went to 57 East 18th Street. The special employee returned a short while later and my partner and I proceed to Oak and Orleans. I left the vehicle and entered a drug store and a short while later I observed the defendant and special employee inside the drug store around the telephone.

Q And what if anything happened thereafter?

A Well, at that time the defendant and the other man crossed Orleans and went to the east side of the street.

Q Did you remain in the drug store at this time?

A Yes, I did.

Q What if anything did you next observe?

A I next observed the defendant and the special employee walking south on Orleans. I left the drug store and followed them to about Chicago Avenue.

Q What if anything occurred at that time?

A As they were about to board a bus eastbound on Chicago Avenue, the special employee gave me a tinfoil package and indicated he had purchased it from the defendant. I placed the defendant under arrest at that time.

Q Now, the individual you testified to as the special employee, is that Mr. Bradley?

A Yes, it is.

Q Officer Williams, why specifically, did you go to the Rexall Drug Store on the corner, that you described?

A That was the pre-arranged spot that—

MR. ADAM: Object, Judge. This obviously going to call for hearsay and statements made outside the presence of the defendant.

THE COURT: I think it was brought up, it was suggested it being a chance meeting, and I think without going into any conversation the Officer might explain his being there, without permitting specific conversation.

MR. EVINS: Judge, they would be doing indirectly which they couldn't do directly, if he is going to state in the record that he was there by pre-arrangement of some sort.

THE COURT: I think there was evidence to that affect already, and I think both defense attorneys have

in the questioning in the vein that this was a chance meeting. I think it was something other than that, and I think the State may point this out.

MR. ADAM: Well, Judge, my only other objection, other than those, which we have already named in this, while it might be said at sometime, although I certainly don't concede it is true, but it might be said that the defense opened the door with regard to one witness, it certainly wouldn't open it as to another witness, and we saw fit not to go into that open door, if such it were, with the other witness. And we certainly haven't done it with this witness.

MR. EISEN: I think they asked the other witness how Officer Williams happened to be in the particular drug store at that particular time. They made a big point of it and I think that it is important to this case.

THE COURT: I believe to some extent the attorney's point is well taken, but as Mr. Eisen points out, it was specifically in reference to Officer Williams, and I think that no one could better answer that than the officer himself. Therefore he may answer.

THE WITNESS: Would you repeat the question, please?

MR. FLAUM: Mr. Reporter, would you read the question, please?

(Pending question read by the reporter) —

THE WITNESS: The Rexall Drug Store at Oak and Orleans, it was pre-arranged, the spot where I should go, where the informer and the special employee would be.

MR. FLAUM: Q You said the special employee and the informer. Is that what you mean, or is that the special employee and the defendant?

MR. ADAM: I object to this, Judge.

MR. EVINS: That's what he said.

MR. ADAM: Not only that, it is leading and suggestive.

THE COURT: I think he may clarify this.

The State Rests

Motion for discharge at the close of the state's case.

Argument on Motion as to point one by Mr. Adam

Answer to point one by Mr. Flaum

Rebuttal by Mr. Adam

Argument by Mr. Adam on Point II

Answer by Mr. Flaum

Rebuttal by Mr. Adam

THE COURT: I can't help but comment that both counsel have done an exceptional job in presenting the law.

In regard to point one, the Court would cite to counsel for both sides People versus Bastey, 74 Ill. App 2d. 487, September of 1966, which is a later case.

In regard to point two, I think the Russell case, as pointed out, would have been bad but for the bill of particulars, and certainly the bill of particulars under these circumstances couldn't cure the bad indictment. And as has been pointed out by counsel for both sides, the 7th Circuit does seem to indicate that the name of the purchaser is not even necessary. Therefore, I feel that the use of the bill of particulars in this case was merely to clarify, not to cure.

For these reasons the Court will deny the defendant's motion.

FOR THE DEFENSE

JOHN ADAMS, called as a witness in his own behalf, having been first duly sworn on oath, testified as follows:

DIRECT EXAMINATION

BY MR. EVINS:

My name is John Adams, I am the defendant in this indictment, 67-641.

Q Did you on January 4, 1967, sell to a person by the name of Al Nichols, a quantity of heroin as alleged and set forth in the indictment that I just described to you?

A No, sir, I did not.

Q Did you on January 4, 1967, sell to a person by the name of Albert Bradley, a quantity of heroin?

A No, sir, I did not.

Q Did you know a person by the name of Al Nichols as referred to in this indictment?

A No, sir.

I know the person that took the stand and testified here yesterday. His name is A. B. Bradley. I have known him five or six years.

I saw A. B. Bradley on January 4, 1967 about 12:00 o'clock at 57 East 18th Street in a tavern. Prior to going to the tavern he had my brother to call me. I talked to him on the phone. He told me to come on over he was spending them up, and he wanted to buy me a drink. He did not tell me he wanted to go someplace with him on the phone. When I arrived at the tavern, Mr. Bradley was sitting at the bar with several other men, couple of ladies; he was buying everybody drinks in there. I had a drink with him.

Q How long were you there?

A Approximately, about half an hour.

Q Was he in your presence the whole time you were there?

A No, sir. He got up and went to the washroom, he left his money lying on the bar. He told me to watch it until he came back, and he went in the back, to the washroom, and I sit up there and watched his money and I was drinking my beer.

Q How much money did he have on the bar?

A Oh, he had, there was bills, maybe seven or eight dollars in bills, all in bills.

A And when you left there, where did you go? Did you leave there?

A He asked me to come, to go with him to the north-side. He wanted me to go with him. Him and his wife had had an argument so he had slapped her and she run off and let him.

Q Did he tell you when she had run off?

A He said that he wanted me to go on the northside with him to see if I could find her, because I know her.

I know his wife. Her name is Charlie Mae. He asked me to go to the north side with him to look for her and I agreed to. I did not have a dollar with me. I only had

65 or 70 cents. We walked on the corner of 18th and Wabash and caught the bus going north on Wabash Avenue. We got off the bus at 12th and Wabash, transferred and went downstairs and caught the elevated, we got off the elevated at Chicago and State and went upstairs and was waiting on the northeast corner. Mr. Bradley paid the fare.

Q Take it from there and tell us what happened?

A So I went, he told me to go inside and wait and he would be right back, and he was going to check something out. So I went inside and stood inside, I think it was a drug store there, because it was cold out and he was gone about 10 minutes, 10 or 15 minutes, and he come back and then he beckoned for me to come out because the bus was coming, and we caught the bus going west.

Q You went west on the bus?

A Yes, sir.

Q And what happened when you got to Orleans and Chicago Avenue?

A We got off the bus and I asked him what direction now, so he said well, we got to go down a couple of blocks this way, so we started walking. We walked and we walked, and I said, "I'm getting cold, man, it's cold out, how far do we have to go?" He said we haven't got far, so we walked and he said "Let's go in the drug store, let's go inside, in the drug store and get warm."

Q That is what Mr. Bradley said to you?

A Yes, sir.

I saw Officer Williams in the drug store. He was about 18 or 20 feet from me over by the Counter.

Q And how long were you in the drug store?

A Oh, approximately, about 10 minutes, I was in there about 10 minutes because I told me, I said I am going to call my wife before I left because he said there was something she wanted me to do and how long would it be before I be back. I told her I didn't know. So just remember that, I said I am going to call my wife and tell her that I will be home as soon as possible. And so I made a call to her and she asked where was I at and I told her I am on the northside overhere, looking—

Q You made a telephone call?

A Yes, sir.

Q And you told your wife you were A. B. over on the northside?

A Yes, sir.

Q And what happened after that?

A Then I hung the phone up and I was looking out the window, some distance from the window, and I saw a friend of mine that I know and I told A. B., I said, "I am going out there. There's Charlie across the street." I said, "I'm going over there to see if he seen your wife," because he knows his wife, too.

Q Charlie knows Charlie Mae?

A Yes.

Q And that's Mr. Bradley's wife?

A Yes, sir.

Q And did you see Charlie?

A Yes, sir.

Q And did you have a conversation with Charlie?

A Yes, sir, I went over and talked to him and asked him had he saw Charlie Mae. He asked me what was I doing over there and I told him I come over with A. B., looking for his wife, had he seen her. He said, "Well, has she done and run off and left him again?" I said yes. He said, "Well, I haven't seen her." That was the conversation.

Q Was that all you said?

A Yes, sir.

Q And now, at that time did you give Charlie any money?

A No, sir.

Q Did Charlie give you any money?

A No, sir.

Q Then after you—Bradley knows Charlie, too, doesn't he?

A Yes.

Q After you had this conversation what did you do then?

A I came back, started back to the drug store where he was and he came out and he told me, he said—

Q Did you beckon for him to come out?

A No, sir, he came out himself, and met me and so he told me, he said, "Well, I think we'd better go on back on the south side." He said, "Maybe she might come back, if not we can come on back here later on tonight."

Q And then what happened after that?

A We started back to catch the bus.

Q And then what happened?

A We got up to Chicago Avenue and we were standing there waiting to take the bus and he said he had to go to a latrine and I told him, I said, "You can't go here." So he said, "Well, I don't care where I do it." I said, there's a gas station across the street, go over there and you use the latrine, "so he went in the gas station to go to the latrine, to use the bathroom. I was standing on the corner, waiting, and when he came back we boarded the bus, and he was waiting to pay the fare and that's when I was arrested, I was pulled off the bus by Officer Williams.

Q And was he also taken off the bus?

A Yes, sir.

Q And when you were taken off the bus by Officer Williams did he tell you what he was taking you off the bus for?

A No, sir. He said I looked suspicious, I was over here trying to steal something.

Q Did you tell Officer Williams at that time that you had gone over there with Mr. Bradley to look for his wife?

A Yes, sir, I did.

Q You told him that?

A Yes, sir.

Q And then what did Officer Williams do then?

A He carried me over to the gas station and searched me.

Q And did he take Bradley, also?

A Yes, sir, taken both of us.

Q Did he search him too?

A Yes, sir, he searched him.

We were taken and put into another car with Officer Nance and transported to 11th and State. The Officers

later told me that I was under arrest for the sale of narcotics. I told them why I went to the northside.

Q Well, how much money did you have on you when you were arrested?

A 60 cents, I think, I had 60 cents.

Q You had the same amount you had on when you left the southside.

A All except a dime.

Q And what did you do with the dime?

A To make a phone call to my wife.

I did not give People's Exhibit 1-D to Al Nichols on January 4, 1967. I did not give People's Exhibit 1-D to Albert Bradley on January 4, 1967. I did not have People's Exhibit 1-D in my possession. Today is the first time I saw People's Exhibit 1-D.

CROSS EXAMINATION

BY MR. FLAUM:

I first met Mr. Bradley at about 12:00 or 12:30 at 57 Club. He was there.

Q Fine. Thank you. Mr. Adams, you testified that you have known Mr. Bradley for sometime, is that correct?

A Correct.

Q Could you estimate about how long that was?

A Five or six years.

Q Had you met him previously at that tavern?

A Every day.

Q Do you know most of his friends?

A Yes, sir, I know quite a few of his friends.

Q And now, did you testify that when you arrived at the tavern he was, he being Mr. Bradley, was buying drinks for some people who had been nice to him, or kind to him?

A Yes, sir, he was.

Q And were they his friends?

A Yes, sir, I imagine they were, they said they were.

* * * *

MR. FLAUM: Q Could you give us the names of some of the people who were in the tavern at that time, drinking?

A Yes, sir, there was a boy named Russell and a boy named Oatis; and there was a girl named Emma, and there as—let's see who else. My brother, he was in there.

Q And now, you said you received a call from Mr. Bradley that day, is that correct?

A Yes, sir.

I work at the 57 Club. I am the porter at night.

Q How far away was he—strike that.

How close is the closet Officer Williams was to you at any one time when you were in the drug store together with the officer?

A As I remember, when him and I was in the drug store, we was standing up near the front. We was only going in there to get warm, so he said. I remember seeing Officer Williams standing over there, over there by the front. We stood up there and I remember him walking over to him and pushing him and he said, "Pardon me."

Q Who pushed who?

A A. B.

Q Pushed Officer Williams?

A He said, "Pardon me." And he stood over by the counter, and he went over by the counter.

The Defense Rests

ALBERT BRADLEY called as a witness on behalf of the State, having been previously duly sworn, resumed the stand and testified further in rebuttal as follows:

DIRECT EXAMINATION

BY MR. EISEN:

My name is Albert Bradley. I am also known as Al Nichols. I testified previously in this case. I was in the 57 Club on January 4, 1967. I left there about 2:00 something.

MR. ADAM: No, I just asked him if he drank today.

Q Have you been paid for this testimony here today, since yesterday?

A No, sir.

Q You expect a little bit, though, don't you?

MR. FLAUM: Object, your Honor.

THE WITNESS: No, sir.

MR. ADAM: Was there a ruling on that, Judge?

THE COURT: I believe he responded.

MR. ADAM: Q The answer is no, you haven't been paid and you don't expect to be paid, is that right?

A That's right.

Q Just never mind that. Was the defendant in the tavern when you went to the car, or wasn't he?

A No, he was not.

Q All right. Then you came back to the tavern, right?

A Yes, sir.

Q Then you left again?

A Me and the defendant, yes.

MR. ADAMS: Q You were high in wine at the time weren't you?

A No, I wasn't.

Q You had been drinking wine?

A Yes, I had.

Q And you had some narcotics that day, hadn't you?

A No, I hadn't.

MR. EISEN: The State will now call Officer Williams back to the stand.

MR. ADAM: We will object to Officer Williams testifying. He has been in Court all this time conferring with the State's Attorney.

MR. FLAUM: We will object to the speech, your Honor. Officer Williams has been in Court and he hasn't conferred with the State's Attorney on this case.

MR. ADAM: I don't know what he was conferring about, but he has been conferring with the State's Attorney and we object to recalling him.

MR. FLAUM: We are entitled to have an officer present during the course of the trial.

THE COURT: He may be called in rebuttal.

PHILLIP WILLIAMS, having been previously called as a witness on behalf of the People, having been previously sworn, resumed the stand and testified further in rebuttal as follows:

DIRECT EXAMINATION

BY MR. EISEN:

My name is Phillip Williams. I previously testified in this case.

Q And when the defendant and the informant arrived, in what area of the drug store were you in?

A I was in the, about the center of the drug store when I observed the informer and the defendant.

Q And how close were you to him when he did that?

A The first time I was still about the center of the tavern—I mean the drug store. I would say approximately as far as from here to Mr. Adams, which I would estimate to be 15 or 17 feet. The second time the defendant made a phone call I was standing directly next to him at the next telephone.

The State Rests in Rebuttal

The Defense Rests in Rebuttal

Motion for a finding of not guilty at the cost of all the evidence.

THE COURT: The Motion will be denied.

Argument by the State

Argument by the Defense

Argument by the State in Rebuttal

Finding of Guilty

Motion for a New Trial denied

Motion in Arrest of Judgment denied

Hearing in Aggravation and Mitigation

MR. FLAUM: Your Honor, for the purpose of aggravation, may the record reflect that in 1956 the defendant, John Adams, received a sentence of two years and two years and one day in the Illinois State Peniten-

tiary upon a conviction for the sale of narcotics. In 1960 the defendant received six months—

MR. EVINS: Object to that, this is not proveable.

MR. FLAUM: Well, your Honor this is just by way of aggravation. We are not offering it for any other purpose.

THE COURT: This is true, any conviction, I think, Mr. Evins, would be proper, if that is what it is.

MR. FLAUM: Your Honor, there was a conviction for possession of a hypodermic needle and he received six months.

THE COURT: When was this?

MR. FLAUM: In 1960, your Honor. The defendant received 11 months in the County Jail in 1963 on a charge of theft. In February, 1965, he received—

MR. EVINS: Let the record show I am objecting to the reading of all these things in the record.

THE COURT: These are convictions? I don't believe he is reading any arrests.

MR. FLAUM: In February, 1967, your Honor—

MR. EVINS: My objection, I take it, is overruled, Judge?

THE COURT: Yes, that's correct.

MR. FLAUM: In February, 1965, two years probation, first 30 days in the House of Correction on a charge of theft.

Your Honor, based upon the nature of the offense here, the recommendation of the State would be 10 to 20 years in the Illinois State Penitentiary.

THE COURT: The Court sentences the Defendant, MR. ADAMS, to a term in the penitentiary from 10 to 13 years.

Defendant advised of his right to appeal.

Order of Court appointing same for purpose of appeal.

Certificate of Official Court Reporters

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(No. 41446.—Judgment affirmed.)

THE PEOPLE OF THE STATE OF ILLINOIS, APPELLEE

vs.

JOHN ADAMS, APPELLANT

Opinion filed September 29, 1970.

1. **CRIMINAL LAW**—*when misnomer in indictment charging unlawful sale of narcotics is not fatal.* Although the indictment charging defendant with an unlawful sale of narcotics named the purchaser incorrectly, the misnomer was not fatal, where defendant, by way of a bill of particulars, became aware of the purchaser's true identity prior to trial, for section 3 of the Uniform Narcotic Drug Act does not make the purchaser's identity an element of the offense, and the court will not find a fatal variance between the indictment and proof where it is not shown that the jury was misled or that substantial harm was brought upon the defendant. (p. 203)

2. **SAME**—*preliminary hearing is "critical stage" of criminal process.* Although a preliminary hearing, which is designed to determine if there is probable cause to believe an offense has been committed by defendant is not a necessary step in a criminal prosecution, a preliminary hearing has been held by the United States Supreme Court to be a "critical stage" in the proceedings. (*People v. Bonner*, 37 Ill.2d 553, and *People v. Morris*, 30 Ill.2d 406, overruled in part.) (p. 205)

3. **SAME**—*rule requiring counsel at preliminary hearing has only prospective application.* Defendant, on review of a narcotics conviction, cannot complain that his constitutional right to counsel was denied by the court's failure to appoint counsel at his preliminary hearing, despite his failure to request counsel at the time, for the recent rule of *Coleman v. Alabama*, 399 U.S. 1, 26 L.Ed. 2d 387, requiring counsel on the ground that a preliminary hearing is a "critical stage" of the proceedings, is not to be given retroactive application. (p. 206)

4. *SAME—when evidence supports narcotics conviction.* Where evidence shows a controlled sale of narcotics by an informant acting in cooperation with two police officers, and circumstantial evidence and testimony, if believed, was sufficient to demonstrate defendant's guilt of the unlawful sale of narcotics, the reviewing court will find the conviction supported by sufficient evidence, although the officers neither viewed the transfer nor recovered the marked currency used. (p. 208).

APPEAL from the Circuit Court of Cook County; the Hon. JACQUES F. HEILINGOETTER, Judge, presiding.

SAM ADAM, EDWARD M. GENSON, and CHARLES B. EVANS, all of Chicago, for appellant.

WILLIAM J. SCOTT, Attorney General, of Springfield, and EDWARD V. HANRAHAN, State's Attorney, of Chicago, (JAMES B. ZAGEL, Assistant Attorney General, and ELMER C. KISSANE, and THOMAS HOLUM, Assistant State's Attorneys, of counsel,) for the People.

Mr. JUSTICE WARD delivered the opinion of the court:

Following a bench trial in the circuit court of Cook County, the defendant, John Adams, was found guilty of the unlawful sale of a narcotic drug and was sentenced to a term of from 10 to 13 years in the penitentiary. On appeal he claims that the judgment of conviction must be set aside because (1) he was deprived of his constitutional right to be advised of the nature of the accusation against him, (2) he was denied his constitutionally assured right to counsel at the preliminary hearing, and (3) the evidence was insufficient as a matter of law to support the finding of guilty. The constitutional questions presented give this court jurisdiction on direct appeal. Ill. Rev. Stat. 1969, ch. 110A, par. 603.

The relevant portion of the indictment charged the defendant with the sale of the narcotic drug heroin "in that he knowingly sold to Al Nichols." At trial evidence disclosed that the true name of the alleged purchaser was Albert Bradley, but that he was also known as Al Nichols. The record further shows that the defendant was aware of the true name of the purchaser prior to trial, this having been made known to the defendant by

the State in response to his motion for bill of particulars. It is not disputed that the evidence showed that the "Al Nichols" named in the indictment and the Albert Bradley who testified at the trial are the same person.

The defendant contends that the intentional misnomer which appeared in the indictment deprived him of his constitutional right to be informed of the nature of the accusation against him. A defect of this character in an indictment, it is charged, prevents an accused from intelligently pleading to the charge, interferes with the effective preparation of a defense, and precludes a defendant from raising a conviction or acquittal as a plea in bar to a subsequent prosecution for the same offense. The defendant argues that in order to satisfy the constitutional requirements, an indictment for the unlawful sale of narcotics must accurately set forth the true and correct name of the alleged purchaser.

Section 9 of article II of the constitution of Illinois provides, in part, that "In all criminal prosecutions the accused shall have the right * * * to demand the nature and cause of the accusation * * *." This constitutional assurance has been interpreted to mean that the offense charged must be sufficiently set forth so that the accused will be able properly to prepare his defense and raise the judgment as a plea in bar to a subsequent prosecution for the same offense. *People v. Griffin*, 36 Ill.2d 430; *People v. Beeftink*, 21 Ill.2d 282.

We consider that it is not necessary that an indictment for the sale of a narcotic drug name the purchaser in order to satisfy this constitutional requirement. Section 3 of the Uniform Narcotic Drug Act (Ill. Rev. Stat. 1969, ch. 38, par. 22—3) declares it to be "unlawful for any person to * * * possess * * * sell * * * any narcotic drug, except as authorized in this Act." The statute creating the offense makes no reference to the purchaser of the drug and his identity is not an element of the crime. The gravamen of the offense is the unlawful sale itself. Many Federal courts considering the sufficiency of indictments returned under a Federal statute which resembles ours have also concluded that the purchaser of the drug need not be named in the indictment. The Federal statute makes it unlawful for any person "to sell,

barter, exchange, or give away narcotic drugs" except under specified exceptions and circumstances. (26 U.S.C., sec. 4705(a).) In *Clay v. United States* (10th cir. 1963), 326 F.2d 196, 199, the court, affirming a conviction based on an indictment which did not include the name of the purchaser, stated: "The statute makes no provision or requirement with respect to the identity of the person to whom the illegal sale is made and we must therefore conclude * * * that the identity of the purchaser is not an element of the offense." Too, in *Collins v. Markley* (7th cir. 1965), 346 F.2d 230, it was held that the purchaser need not be named in an indictment under that statute. See also, *Aggers v. United States* (8th cir. 1966), 366 F.2d 744; *United States v. Jackson* (3rd cir. 1965), 344 F.2d 158; *Sanchez v. United States* (1st cir. 1965), 341 F.2d 379, cert. den. 381 U.S. 940.

The question remaining here is the effect of the indictment's incorrectly naming the purchaser in the indictment. This court has held in *People v. Figgers*, 23 Ill.2d 516, 519, that where an indictment charges the elements essential to an offense under the statute, other matters unnecessarily appearing in the indictment may be rejected as surplusage. (Cf. *People v. Peppas*, 24 Ill.2d 483.) Thus, as the naming of the person to whom the illegal sale was made was not essential to the sufficiency of the indictment in question, the misnomer may be regarded as surplusage. A question evolving from this is whether the variance between the allegations in the indictment and the evidence presented was fatal so as to invalidate the conviction. This court has held that no fatal variance will be found where from the record there is no question as to the identity of the person named in the indictment. (*People v. Jankowski*, 391 Ill. 298, 302.) Too, variances as to names will not be regarded as material unless it appears that the jury was misled or that substantial harm was thereby brought upon the defendant. (*People v. Allen*, 17 Ill.2d 55, 58.) Here, the record shows unmistakably that it was disclosed in the trial that "Al Nichols" and Albert Bradley were the same person. No prejudice was incurred by the defendant as he was aware of this prior to trial. The defendant's pro-

tection against double jeopardy is assured because identification can be established by the use of the record or parol testimony or both. *People v. Jankowski*, 391 Ill. 298; *People v. Petropoulos*, 59 Ill. App. 2d 298, affirmed 34 Ill.2d 179; cf. *Russell v. United States*, 369 U.S. 749, 8 L. Ed. 2d 240, 82 S. Ct. 1038.

Parenthetically, we would observe that while, of course, a void indictment cannot be validated by a bill of particulars (*People v. Blanchett*, 33 Ill.2d 527; *People v. Flynn*, 375 Ill. 366; *Russell v. United States*, 369 U.S. 749, 8 L. Ed. 2d 240, 82 S. Ct. 1038), a defendant accused by an indictment legally adequate in detail may seek a bill for greater detail of the charge against him "so as to enable the accused to better understand the nature of the charge against him or better prepare his defense." *People v. Patrick*, 38 Ill.2d 255, 260; see, *Scott v. United States* (3rd cir. 1965), 342 F.2d 813.

Next the defendant argues that he was erroneously denied his constitutional right to have counsel appointed for him at the preliminary hearing. No request for the appointment of counsel was made at the time of the hearing, but we have held that if the right to counsel exists by virtue of the critical nature of the proceedings an accused is entitled to representation even though there has not been a specific request on his part for counsel. (*People v. Bonner*, 37 Ill.2d 553, 561.) We have held that a preliminary hearing does not constitute a "critical stage" in the criminal prosecution so as to give rise to a constitutional right to representation. (*People v. Bonner*, 37 Ill.2d 553; *People v. Morris*, 30 Ill.2d 406.) In *Bonner* and *Morris* the preliminary hearings were characterized as proceedings to ascertain whether a crime had been committed, and to determine whether there was probable cause to believe that the accused had committed the crime. However, the United States Supreme Court recently held that the preliminary hearing proceeding in Alabama was a "critical stage" in that State's criminal process requiring the presence of counsel. *Coleman v. Alabama*, 399 U.S. 1, 26 L. Ed. 2d 387, 90 S. Ct. 1999, 38 U.S.L.W. 4535.

A preliminary hearing in Alabama, as in Illinois, has the purpose of determining whether there is probable cause to believe an offense has been committed by the defendant (Code of Alabama, Tit. 15, secs. 139, 140, 151; Ill. Rev. Stat. 1969, ch. 38, par. 109—3). In both States the hearing is not a required step in the process of prosecution, as the prosecutor may seek an indictment directly from the grand jury, thereby eliminating the proceeding. (*Ex Parte Campbell*, 278 Ala. 114, 176 S. 2d 242; Ill. Rev. Stat. 1969, ch. 38, par. 111—2.) In neither State is a defendant required to offer defenses at the hearing at the risk of being precluded from raising them at the trial itself (*Alabama v. Coleman*, 44 Ala. App. 429, 433, 211 So. 2d 917, 921; *People v. Bonner*, 37 Ill.2d 553, 560). We conclude that the preliminary hearing procedures of Alabama and Illinois are substantially alike and we must consider because of *Coleman v. Alabama*, 38 U.S.L.W. 4535, that a preliminary hearing conducted pursuant to section 109—3 of the Criminal Code (Ill. Rev. Stat. 1969, ch. 38, par. 109—3) is a "critical stage" in this State's criminal process so as to entitle the accused to the assistance of counsel.

The pivotal consideration in the remaining question of whether the direction of *Coleman* is to be applied to the present case is whether *Coleman* is to be given retroactive effect or is to be applied prospectively only. On this question of retroactive or prospective application the United States Supreme Court said in *Stovall v. Denno*, 388 U.S. 293, 297, 18 L. Ed. 2d 1199, 1203, 87 S. Ct. 1967: "The criteria guiding resolution of the question implicate (a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards."

The Supreme Court's purpose in requiring representation by counsel at the preliminary hearing was obviously to provide greater protection for the rights of an accused. The court in *Coleman* discussed considerations which would serve this purpose: "First, the lawyer's skilled examination and cross-examination of witnesses

may expose fatal weaknesses in the State's case, that may lead the magistrate to refuse to bind the accused over. Second, in any event, the skilled interrogation of witnesses by an experienced lawyer can fashion a vital impeachment tool for use in cross-examination of the State's witnesses at the trial, or preserve testimony favorable to the accused of a witness who does not appear at the trial. Third, trained counsel can more effectively discover the case the State has against his client and make possible the preparation of a proper defense to meet that case at the trial. Fourth, counsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail." *Coleman v. Alabama*, 26 L. Ed. 2d at 397, 38 U.S.L.W. 4535, 4537-4538.

The right to counsel at trial (*Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792), and on appeal (*Douglas v. California*, 372 U.S. 353, 9 L. Ed. 2d 811, 83 S. Ct. 814), and at some forms of arraignment (*Hamilton v. Alabama*, 368 U.S. 52, 7 L. Ed. 114, 82 S. Ct. 157) have been made retroactive because the Supreme Court considered that at these stages in the criminal process the absence of counsel "almost invariably" results in the denial of a fair trial. (See *Arse-nault v. Massachusetts*, 393 U.S. 5, 21 L. Ed. 2d 5, 89 S. Ct. 35.) However, in *Stovall* the court observed: "The extent to which a condemned practice infects the integrity of the truth-determining process at trial is a 'question of probabilities'. [Citation.] Such probabilities must in turn be weighed against the prior justified reliance upon the old standard and the impact of retroactivity upon the administration of justice." *Stovall v. Denno*, 388 U.S. 293, 298, 18 L. Ed. 2d 1199, 1204.

On this scale of probabilities, we judge that the lack of counsel at a preliminary hearing involves less danger to "the integrity of the truth-determining process at trial" than the omission of counsel at the trial itself or on appeal. Such danger is not ordinarily greater, we consider, at a preliminary hearing at which the accused is unrepresented than at a pretrial line-up or at an in-

terrogation conducted without presence of an attorney. The constitutional right to counsel at these two stages was denied retroactive application by the Supreme Court. *Stovall v. Denno*, 388 U.S. 293, 18 L. Ed. 2d 1199, 87 S. Ct. 1967; *Johnson v. New Jersey*, 384 U.S. 719, 16 L. Ed. 2d 882, 86 S. Ct. 1772.

Against this background, we regard, too, the prior reliance of law enforcement authorities upon former holdings that counsel was not required at preliminary hearings and the effect of a retrospective application of the new requirement. (Cf. *Jenkins v. Delaware*, 395 U.S. 213, 23 L. Ed. 2d 253, 89 S. Ct. 1677.) Most Federal and State courts that considered the question ruled that a preliminary hearing, which had for its primary purpose the determination of probable cause and at which the accused was not required to enter a plea, waive any defenses or otherwise prejudice himself, was not a "critical stage" requiring the appointment of counsel. (See Annot., 5 A.L.R.2d 1269, 1314-1342 and cases cited.) It is clear there has been understandable reliance on these ruling by law enforcement officials and the courts. It is clear, too, that a retroactive application of *Coleman* would obviously have a far reaching and grievous effect on the administration of justice. Thousands of cases without doubt would have to be reconsidered in light of the new requirement. The impact of this on already congested criminal dockets and now overburdened courts would be increased by the evident difficulties of applying the harmless error doctrine (*Chapman v. California*, 386 U.S. 18, 17 L. Ed. 2d 705, 87 S. Ct. 824,) to many of the cases to be reconsidered, as the Supreme Court directed to be done in *Coleman*. We conclude from these considerations that *Coleman* should not be given retroactive application.

The final point raised by the defendant is that the evidence was insufficient to establish guilt beyond a reasonable doubt. We consider that because of the circumstances of the case any detailed summary of evidence would be lengthy and really unnecessary. The evidence presented showed a controlled sale of narcotics by an informant acting in cooperation with two police officers.

Circumstantial evidence and testimony, if believed, certainly demonstrated the defendant's guilt. It was the function of the trial court as the trier of fact to evaluate the credibility of the witnesses and its "finding of guilty will be disturbed only where the evidence is so unreasonable, improbable or unsatisfactory as to leave a reasonable doubt as to the defendant's guilt." (*People v. Scott*, 38 Ill.2d 302, 306.) A review of the evidence discloses no cause to disturb the finding of the trial judge. In *People v. Realmo*, 28 Ill.2d 510, this court affirmed a trial court's finding of guilty under circumstances resembling those here. There one or more officers, although not viewing the transfer of either the narcotics or the marked currency, as here, observed a significant part of the defendant's activity is making a controlled sale of narcotics, and corroborated an informer's testimony in this respect. In *Realmo*, too, none of the prerecorded money was recovered by the police.

For the reasons given, the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

Respectfully submitted,

SAM ADAM and
CHARLES B. EVINS
Attorneys for Appellant's

SUPREME COURT OF THE UNITED STATES

No. 6048, October Term, 1970

JOHN ADAMS, PETITIONER

v.

ILLINOIS

On petition for writ of Certiorari to the Supreme Court of the State of Illinois.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to question 2 as set forth in the petition which reads as follows:

"2. Whether *Coleman v. Alabama*, 399 U.S. 1 (1970) is retroactive and/or applicable to a cause where, prior to trial, the defendant objected to the failure to provide counsel at the preliminary hearing?"

March 8, 1971